

ASSEMBLY BILL

No. 139

Introduced by Assembly Member Gatto

January 9, 2015

An act to amend Sections 2337 and 2040 of the Family Code, to amend Sections 250, 267, 279, 2580, 5000, 5302, 13111, 13206, and 13562 of, to amend and renumber Sections 5600, 5601, 5602, 5603, and 5604 of, to add Section 69 to, to add the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, to add and repeal Part 4 (commencing with Section 5600) of Division 5 of, and to repeal the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as introduced, Gatto. Nonprobate transfers: revocable transfer upon death deeds.

(1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would, until January 1, 2021, create the revocable transfer on death deed (revocable TOD deed), as defined, which would transfer real property on the death of its owner without a probate proceeding. The bill would require that a person have testamentary capacity to make or revoke the deed and would require that the deed be in a statutory form provided for this purpose. The revocable TOD deed must be signed, dated, acknowledged, and recorded, as specified, to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and

reimbursement. The bill would void a revocable TOD deed if, at the time of the owner's death, the property is titled in joint tenancy or as community property with right of survivorship. The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would also make conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2020.

(2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

(3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect and distribute property due the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2337 of the Family Code is amended to
2 read:

3 2337. (a) In a proceeding for dissolution of marriage, the court,
4 upon noticed motion, may sever and grant an early and separate
5 trial on the issue of the dissolution of the status of the marriage
6 apart from other issues.

7 (b) A preliminary declaration of disclosure with a completed
8 schedule of assets and debts shall be served on the nonmoving
9 party with the noticed motion unless it has been served previously,
10 or unless the parties stipulate in writing to defer service of the
11 preliminary declaration of disclosure until a later time.

12 (c) The court may impose upon a party any of the following
13 conditions on granting a severance of the issue of the dissolution
14 of the status of the marriage, and in case of that party's death, an
15 order of any of the following conditions continues to be binding
16 upon that party's estate:

17 (1) The party shall indemnify and hold the other party harmless
18 from any taxes, reassessments, interest, and penalties payable by
19 the other party in connection with the division of the community
20 estate that would not have been payable if the parties were still
21 married at the time the division was made.

22 (2) Until judgment has been entered on all remaining issues and
23 has become final, the party shall maintain all existing health and
24 medical insurance coverage for the other party and any minor
25 children as named dependents, so long as the party is eligible to
26 do so. If at any time during this period the party is not eligible to
27 maintain that coverage, the party shall, at the party's sole expense,
28 provide and maintain health and medical insurance coverage that
29 is comparable to the existing health and medical insurance coverage
30 to the extent it is available. To the extent that coverage is not
31 available, the party shall be responsible to pay, and shall
32 demonstrate to the court's satisfaction the ability to pay, for the
33 health and medical care for the other party and the minor children,
34 to the extent that care would have been covered by the existing
35 insurance coverage but for the dissolution of marital status, and
36 shall otherwise indemnify and hold the other party harmless from
37 any adverse consequences resulting from the loss or reduction of
38 the existing coverage. For purposes of this subdivision, "health

1 and medical insurance coverage” includes any coverage for which
2 the parties are eligible under any group or individual health or
3 other medical plan, fund, policy, or program.

4 (3) Until judgment has been entered on all remaining issues and
5 has become final, the party shall indemnify and hold the other
6 party harmless from any adverse consequences to the other party
7 if the bifurcation results in a termination of the other party’s right
8 to a probate homestead in the residence in which the other party
9 resides at the time the severance is granted.

10 (4) Until judgment has been entered on all remaining issues and
11 has become final, the party shall indemnify and hold the other
12 party harmless from any adverse consequences to the other party
13 if the bifurcation results in the loss of the rights of the other party
14 to a probate family allowance as the surviving spouse of the party.

15 (5) Until judgment has been entered on all remaining issues and
16 has become final, the party shall indemnify and hold the other
17 party harmless from any adverse consequences to the other party
18 if the bifurcation results in the loss of the other party’s rights with
19 respect to any retirement, survivor, or deferred compensation
20 benefits under any plan, fund, or arrangement, or to any elections
21 or options associated therewith, to the extent that the other party
22 would have been entitled to those benefits or elections as the spouse
23 or surviving spouse of the party.

24 (6) The party shall indemnify and hold the other party harmless
25 from any adverse consequences if the bifurcation results in the
26 loss of rights to social security benefits or elections to the extent
27 the other party would have been entitled to those benefits or
28 elections as the surviving spouse of the party.

29 (7) (A) The court may make an order pursuant to paragraph (3)
30 of subdivision (b) of Section ~~5600~~ 5040 of the Probate Code, if
31 appropriate, that a party maintain a beneficiary designation for a
32 nonprobate transfer, as described in Section 5000 of the Probate
33 Code, for a spouse or domestic partner for up to one-half of or,
34 upon a showing of good cause, for all of a nonprobate transfer
35 asset until judgment has been entered with respect to the
36 community ownership of that asset, and until the other party’s
37 interest therein has been distributed to him or her.

38 (B) Except upon a showing of good cause, this paragraph does
39 not apply to any of the following:

1 (i) A nonprobate transfer described in Section 5000 of the
2 Probate Code that was not created by either party or that was
3 acquired by either party by gift, descent, or devise.

4 (ii) An irrevocable trust.

5 (iii) A trust of which neither party is the grantor.

6 (iv) Powers of appointment under a trust instrument that was
7 not created by either party or of which neither party is a grantor.

8 (v) The execution and filing of a disclaimer pursuant to Part 8
9 (commencing with Section 260) of Division 2 of the Probate Code.

10 (vi) The appointment of a party as a trustee.

11 (8) In order to preserve the ability of the party to defer the
12 distribution of the Individual Retirement Account or annuity (IRA)
13 established under Section 408 or 408A of the Internal Revenue
14 Code of 1986, as amended, (IRC) upon the death of the other party,
15 the court may require that one-half, or all upon a showing of good
16 cause, of the community interest in any IRA, by or for the benefit
17 of the party, be assigned and transferred to the other party pursuant
18 to Section 408(d)(6) of the Internal Revenue Code. This paragraph
19 does not limit the power granted pursuant to subdivision (g).

20 (9) Upon a showing that circumstances exist that would place
21 a substantial burden of enforcement upon either party's community
22 property rights or would eliminate the ability of the surviving party
23 to enforce his or her community property rights if the other party
24 died before the division and distribution or compliance with any
25 court-ordered payment of any community property interest therein,
26 including, but not limited to, a situation in which preemption under
27 federal law applies to an asset of a party, or purchase by a bona
28 fide purchaser has occurred, the court may order a specific security
29 interest designed to reduce or eliminate the likelihood that a
30 postmortem enforcement proceeding would be ineffective or
31 unduly burdensome to the surviving party. For this purpose, those
32 orders may include, but are not limited to, any of the following:

33 (A) An order that the party provide an undertaking.

34 (B) An order to provide a security interest by Qualified Domestic
35 Relations Order from that party's share of a retirement plan or
36 plans.

37 (C) An order for the creation of a trust as defined in paragraph
38 (2) of subdivision (a) of Section 82 of the Probate Code.

39 (D) An order for other arrangements as may be reasonably
40 necessary and feasible to provide appropriate security in the event

1 of the party's death before judgment has been entered with respect
2 to the community ownership of that asset, and until the other
3 party's interest therein has been distributed to him or her.

4 (E) If a retirement plan is not subject to an enforceable court
5 order for the payment of spousal survivor benefits to the other
6 party, an interim order requiring the party to pay or cause to be
7 paid, and to post adequate security for the payment of, any survivor
8 benefit that would have been payable to the other party on the
9 death of the party but for the judgment granting a dissolution of
10 the status of the marriage, pending entry of judgment on all
11 remaining issues.

12 (10) Any other condition the court determines is just and
13 equitable.

14 (d) Prior to, or simultaneously with, entry of judgment granting
15 dissolution of the status of the marriage, all of the following shall
16 occur:

17 (1) The party's retirement or pension plan shall be joined as a
18 party to the proceeding for dissolution, unless joinder is precluded
19 or made unnecessary by Title 1 of the federal Employee Retirement
20 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), as
21 amended (ERISA), or any other applicable law.

22 (2) To preserve the claims of each spouse in all retirement plan
23 benefits upon entry of judgment granting a dissolution of the status
24 of the marriage, the court shall enter one of the following in
25 connection with the judgment for each retirement plan in which
26 either party is a participant:

27 (A) An order pursuant to Section 2610 disposing of each party's
28 interest in retirement plan benefits, including survivor and death
29 benefits.

30 (B) An interim order preserving the nonemployee party's right
31 to retirement plan benefits, including survivor and death benefits,
32 pending entry of judgment on all remaining issues.

33 (C) An attachment to the judgment granting a dissolution of the
34 status of the marriage, as follows:

35
36 EACH PARTY (insert names and addresses) IS
37 PROVISIONALLY AWARDED WITHOUT PREJUDICE
38 AND SUBJECT TO ADJUSTMENT BY A SUBSEQUENT
39 DOMESTIC RELATIONS ORDER, A SEPARATE
40 INTEREST EQUAL TO ONE-HALF OF ALL BENEFITS

1 ACCRUED OR TO BE ACCRUED UNDER THE PLAN
2 (name each plan individually) AS A RESULT OF
3 EMPLOYMENT OF THE OTHER PARTY DURING THE
4 MARRIAGE OR DOMESTIC PARTNERSHIP AND PRIOR
5 TO THE DATE OF SEPARATION. IN ADDITION,
6 PENDING FURTHER NOTICE, THE PLAN SHALL, AS
7 ALLOWED BY LAW, OR IN THE CASE OF A
8 GOVERNMENTAL PLAN, AS ALLOWED BY THE
9 TERMS OF THE PLAN, CONTINUE TO TREAT THE
10 PARTIES AS MARRIED OR DOMESTIC PARTNERS FOR
11 PURPOSES OF ANY SURVIVOR RIGHTS OR BENEFITS
12 AVAILABLE UNDER THE PLAN TO THE EXTENT
13 NECESSARY TO PROVIDE FOR PAYMENT OF AN
14 AMOUNT EQUAL TO THAT SEPARATE INTEREST OR
15 FOR ALL OF THE SURVIVOR BENEFIT IF AT THE TIME
16 OF THE DEATH OF THE PARTICIPANT, THERE IS NO
17 OTHER ELIGIBLE RECIPIENT OF THE SURVIVOR
18 BENEFIT.

19
20 (e) The moving party shall promptly serve a copy of any order,
21 interim order, or attachment entered pursuant to paragraph (2) of
22 subdivision (d), and a copy of the judgment granting a dissolution
23 of the status of the marriage, on the retirement or pension plan
24 administrator.

25 (f) A judgment granting a dissolution of the status of the
26 marriage shall expressly reserve jurisdiction for later determination
27 of all other pending issues.

28 (g) If the party dies after the entry of judgment granting a
29 dissolution of marriage, any obligation imposed by this section
30 shall be enforceable against any asset, including the proceeds
31 thereof, against which these obligations would have been
32 enforceable prior to the person's death.

33 SEC. 2. Section 2040 of the Family Code is amended to read:
34 2040. (a) In addition to the contents required by Section 412.20
35 of the Code of Civil Procedure, the summons shall contain a
36 temporary restraining order:

37 (1) Restraining both parties from removing the minor child or
38 children of the parties, if any, from the state without the prior
39 written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.

(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

1 (5) Execution and filing of a disclaimer pursuant to Part 8
2 (commencing with Section 260) of Division 2 of the Probate Code.

3 (c) In all actions filed on and after January 1, 1995, the summons
4 shall contain the following notice:

5 “WARNING: California law provides that, for purposes of
6 division of property upon dissolution of marriage or legal
7 separation, property acquired by the parties during marriage in
8 joint form is presumed to be community property. If either party
9 to this action should die before the jointly held community property
10 is divided, the language of how title is held in the deed (i.e., joint
11 tenancy, tenants in common, or community property) will be
12 controlling and not the community property presumption. You
13 should consult your attorney if you want the community property
14 presumption to be written into the recorded title to the property.”

15 (d) For the purposes of this section:

16 (1) “Nonprobate transfer” means an instrument, other than a
17 will, that makes a transfer of property on death, including a
18 revocable trust, pay on death account in a financial institution,
19 Totten trust, transfer on death registration of personal property,
20 *revocable transfer on death deed*, or other instrument of a type
21 described in Section 5000 of the Probate Code.

22 (2) “Nonprobate transfer” does not include a provision for the
23 transfer of property on death in an insurance policy or other
24 coverage held for the benefit of the parties and their child or
25 children for whom support may be ordered, to the extent that the
26 provision is subject to paragraph (3) of subdivision (a).

27 (e) The restraining order included in the summons shall include
28 descriptions of the notices required by paragraphs (2) and (3) of
29 subdivision (b).

30 SEC. 3. Section 69 is added to the Probate Code, to read:

31 69. “Revocable transfer on death deed” or “revocable TOD
32 deed” means a revocable transfer on death deed as described in
33 Section 5614.

34 SEC. 4. Section 250 of the Probate Code is amended to read:

35 250. (a) A person who feloniously and intentionally kills the
36 decedent is not entitled to any of the following:

37 (1) Any property, interest, or benefit under a will of the
38 decedent, or a trust created by or for the benefit of the decedent
39 or in which the decedent has an interest, including any general or
40 special power of appointment conferred by the will or trust on the

1 killer and any nomination of the killer as executor, trustee,
2 guardian, or conservator or custodian made by the will or trust.

3 (2) Any property of the decedent by intestate succession.

4 (3) Any of the decedent's quasi-community property the killer
5 would otherwise acquire under Section 101 or 102 upon the death
6 of the decedent.

7 (4) Any property of the decedent under ~~Part Division 5~~
8 (commencing with Section ~~5700~~) of ~~Division 5: 5000~~).

9 (5) Any property of the decedent under Part 3 (commencing
10 with Section 6500) of Division 6.

11 (b) In the cases covered by subdivision (a):

12 (1) The property interest or benefit referred to in paragraph (1)
13 of subdivision (a) passes as if the killer had predeceased the
14 decedent and Section 21110 does not apply.

15 (2) Any property interest or benefit referred to in paragraph (1)
16 of subdivision (a) which passes under a power of appointment and
17 by reason of the death of the decedent passes as if the killer had
18 predeceased the decedent, and Section 673 *does* not apply.

19 (3) Any nomination in a will or trust of the killer as executor,
20 trustee, guardian, conservator, or custodian which becomes
21 effective as a result of the death of the decedent shall be interpreted
22 as if the killer had predeceased the decedent.

23 SEC. 5. Section 267 of the Probate Code is amended to read:

24 267. (a) "Interest" includes the whole of any property, real or
25 personal, legal or equitable, or any fractional part, share, or
26 particular portion or specific assets thereof, or any estate in any
27 such property, or any power to appoint, consume, apply, or expend
28 property, or any other right, power, privilege, or immunity relating
29 to property.

30 (b) "Interest" includes, but is not limited to, an interest created
31 in any of the following manners:

32 (1) By intestate succession.

33 (2) Under a will.

34 (3) Under a trust.

35 (4) By succession to a disclaimed interest.

36 (5) By virtue of an election to take against a will.

37 (6) By creation of a power of appointment.

38 (7) By exercise or nonexercise of a power of appointment.

39 (8) By an inter vivos gift, whether outright or in trust.

1 (9) By surviving the death of a depositor of a Totten trust
2 account or P.O.D. account.

3 (10) Under an insurance or annuity contract.

4 (11) By surviving the death of another joint tenant.

5 (12) Under an employee benefit plan.

6 (13) Under an individual retirement account, annuity, or bond.

7 (14) *Under a transfer on death beneficiary designation in a*
8 *deed or other instrument.*

9 ~~(14)~~

10 (15) Any other interest created by ~~any~~ a testamentary or inter
11 vivos instrument or by operation of law.

12 SEC. 6. Section 279 of the Probate Code is amended to read:

13 279. (a) A disclaimer to be effective shall be filed within a
14 reasonable time after the person able to disclaim acquires
15 knowledge of the interest.

16 (b) In the case of any of the following interests, a disclaimer is
17 conclusively presumed to have been filed within a reasonable time
18 if it is filed within nine months after the death of the creator of the
19 interest or within nine months after the interest becomes
20 indefeasibly vested, whichever occurs later:

21 (1) An interest created under a will.

22 (2) An interest created by intestate succession.

23 (3) An interest created pursuant to the exercise or nonexercise
24 of a testamentary power of appointment.

25 (4) An interest created by surviving the death of a depositor of
26 a Totten trust account or P.O.D. account.

27 (5) An interest created under a life insurance or annuity contract.

28 (6) An interest created by surviving the death of another joint
29 tenant.

30 (7) An interest created under an employee benefit plan.

31 (8) An interest created under an individual retirement account,
32 annuity, or bond.

33 (9) *An interest created under a transfer on death beneficiary*
34 *designation in a deed or other instrument.*

35 (c) In the case of an interest created by a living trust, an interest
36 created by the exercise of a presently exercisable power of
37 appointment, an outright inter vivos gift, a power of appointment,
38 or an interest created or increased by succession to a disclaimed
39 interest, a disclaimer is conclusively presumed to have been filed

1 within a reasonable time if it is filed within nine months after
2 whichever of the following times occurs latest:

3 (1) The time of the creation of the trust, the exercise of the power
4 of appointment, the making of the gift, the creation of the power
5 of appointment, or the disclaimer of the disclaimed property.

6 (2) The time the first knowledge of the interest is acquired by
7 the person able to disclaim.

8 (3) The time the interest becomes indefeasibly vested.

9 (d) In case of an interest not described in subdivision (b) or (c),
10 a disclaimer is conclusively presumed to have been filed within a
11 reasonable time if it is filed within nine months after whichever
12 of the following times occurs later:

13 (1) The time the first knowledge of the interest is acquired by
14 the person able to disclaim.

15 (2) The time the interest becomes indefeasibly vested.

16 (e) In the case of a future estate, a disclaimer is conclusively
17 presumed to have been filed within a reasonable time if it is filed
18 within whichever of the following times occurs later:

19 (1) Nine months after the time the interest becomes an estate in
20 possession.

21 (2) The time specified in subdivision (b), (c), or (d), whichever
22 is applicable.

23 (f) If the disclaimer is not filed within the time provided in
24 subdivision (b), (c), (d), or (e), the disclaimant has the burden of
25 establishing that the disclaimer was filed within a reasonable time
26 after the disclaimant acquired knowledge of the interest.

27 SEC. 7. Section 2580 of the Probate Code is amended to read:

28 2580. (a) The conservator or other interested person may file
29 a petition under this article for an order of the court authorizing
30 or requiring the conservator to take a proposed action for any one
31 or more of the following purposes:

32 (1) Benefiting the conservatee or the estate.

33 (2) Minimizing current or prospective taxes or expenses of
34 administration of the conservatorship estate or of the estate upon
35 the death of the conservatee.

36 (3) Providing gifts for any purposes, and to any charities,
37 relatives (including the other spouse or domestic partner), friends,
38 or other objects of bounty, as would be likely beneficiaries of gifts
39 from the conservatee.

1 (b) The action proposed in the petition may include, but is not
2 limited to, the following:

3 (1) Making gifts of principal or income, or both, of the estate,
4 outright or in trust.

5 (2) Conveying or releasing the conservatee's contingent and
6 expectant interests in property, including marital property rights
7 and any right of survivorship incident to joint tenancy or tenancy
8 by the entirety.

9 (3) Exercising or releasing the conservatee's powers as donee
10 of a power of appointment.

11 (4) Entering into contracts.

12 (5) Creating for the benefit of the conservatee or others,
13 revocable or irrevocable trusts of the property of the estate, which
14 trusts may extend beyond the conservatee's disability or life. A
15 special needs trust for money paid pursuant to a compromise or
16 judgment for a conservatee may be established only under Chapter
17 4 (commencing with Section 3600) of Part 8, and not under this
18 article.

19 (6) Transferring to a trust created by the conservator or
20 conservatee any property unintentionally omitted from the trust.

21 (7) Exercising options of the conservatee to purchase or
22 exchange securities or other property.

23 (8) Exercising the rights of the conservatee to elect benefit or
24 payment options, to terminate, to change beneficiaries or
25 ownership, to assign rights, to borrow, or to receive cash value in
26 return for a surrender of rights under any of the following:

27 (A) Life insurance policies, plans, or benefits.

28 (B) Annuity policies, plans, or benefits.

29 (C) Mutual fund and other dividend investment plans.

30 (D) Retirement, profit sharing, and employee welfare plans and
31 benefits.

32 (9) Exercising the right of the conservatee to elect to take under
33 or against a will.

34 (10) Exercising the right of the conservatee to disclaim any
35 interest that may be disclaimed under Part 8 (commencing with
36 Section 260) of Division 2.

37 (11) Exercising the right of the conservatee (A) to revoke or
38 modify a revocable trust or (B) to surrender the right to revoke or
39 modify a revocable trust, but the court shall not authorize or require
40 the conservator to exercise the right to revoke or modify a

1 revocable trust if the instrument governing the trust (A) evidences
2 an intent to reserve the right of revocation or modification
3 exclusively to the conservatee, (B) provides expressly that a
4 conservator may not revoke or modify the trust, or (C) otherwise
5 evidences an intent that would be inconsistent with authorizing or
6 requiring the conservator to exercise the right to revoke or modify
7 the trust.

8 (12) Making an election referred to in Section 13502 or an
9 election and agreement referred to in Section 13503.

10 (13) Making a will.

11 (14) *Making or revoking a revocable transfer on death deed.*

12 SEC. 8. Section 5000 of the Probate Code is amended to read:

13 5000. (a) A provision for a nonprobate transfer on death in an
14 insurance policy, contract of employment, bond, mortgage,
15 promissory note, certificated or uncertificated security, account
16 agreement, custodial agreement, deposit agreement, compensation
17 plan, pension plan, individual retirement plan, employee benefit
18 plan, trust, conveyance, deed of gift, *revocable transfer on death*
19 *deed*, marital property agreement, or other written instrument of
20 a similar nature is not invalid because the instrument does not
21 comply with the requirements for execution of a will, and this code
22 does not invalidate the instrument.

23 (b) Included within subdivision (a) are the following:

24 (1) A written provision that ~~money~~ *moneys* or other benefits
25 due to, controlled by, or owned by a decedent before death shall
26 be paid after the decedent's death to a person whom the decedent
27 designates either in the instrument or in a separate writing,
28 including a will, executed either before or at the same time as the
29 instrument, or later.

30 (2) A written provision that ~~money~~ *moneys* due or to become
31 due under the instrument shall cease to be payable in *the* event of
32 the death of the promisee or the promisor before payment or
33 demand.

34 (3) A written provision that any property controlled by or owned
35 by the decedent before death that is the subject of the instrument
36 shall pass to a person whom the decedent designates either in the
37 instrument or in a separate writing, including a will, executed either
38 before or at the same time as the instrument, or later.

39 (c) Nothing in this section limits the rights of creditors under
40 any other law.

1 SEC. 9. Section 5302 of the Probate Code is amended to read:

2 5302. Subject to Section ~~5600~~: 5040:

3 (a) Sums remaining on deposit at the death of a party to a joint
4 account belong to the surviving party or parties as against the estate
5 of the decedent unless there is clear and convincing evidence of a
6 different intent. If there are two or more surviving parties, their
7 respective ownerships during lifetime are in proportion to their
8 previous ownership interests under Section 5301 augmented by
9 an equal share for each survivor of any interest the decedent may
10 have owned in the account immediately before the decedent's
11 death; and the right of survivorship continues between the surviving
12 parties.

13 (b) If the account is a P.O.D. account:

14 (1) On death of one of two or more parties, the rights to any
15 sums remaining on deposit are governed by subdivision (a).

16 (2) On death of the sole party or of the survivor of two or more
17 parties, (A) any sums remaining on deposit belong to the P.O.D.
18 payee or payees if surviving, or to the survivor of them if one or
19 more die before the party, (B) if two or more P.O.D. payees
20 survive, any sums remaining on deposit belong to them in equal
21 and undivided shares unless the terms of the account or deposit
22 agreement expressly provide for different shares, and (C) if two
23 or more P.O.D. payees survive, there is no right of survivorship
24 in the event of death of a P.O.D. payee thereafter unless the terms
25 of the account or deposit agreement expressly provide for
26 survivorship between them.

27 (c) If the account is a Totten trust account:

28 (1) On death of one of two or more trustees, the rights to any
29 sums remaining on deposit are governed by subdivision (a).

30 (2) On death of the sole trustee or the survivor of two or more
31 trustees, (A) any sums remaining on deposit belong to the person
32 or persons named as beneficiaries, if surviving, or to the survivor
33 of them if one or more die before the trustee, unless there is clear
34 and convincing evidence of a different intent, (B) if two or more
35 beneficiaries survive, any sums remaining on deposit belong to
36 them in equal and undivided shares unless the terms of the account
37 or deposit agreement expressly provide for different shares, and
38 (C) if two or more beneficiaries survive, there is no right of
39 survivorship in event of death of any beneficiary thereafter unless

1 the terms of the account or deposit agreement expressly provide
2 for survivorship between them.

3 (d) In other cases, the death of any party to a ~~multiple-party~~
4 *multiparty* account has no effect on beneficial ownership of the
5 account other than to transfer the rights of the decedent as part of
6 the decedent's estate.

7 (e) A right of survivorship arising from the express terms of the
8 account or under this section, a beneficiary designation in a Totten
9 trust account, or a P.O.D. payee designation, cannot be changed
10 by will.

11 SEC. 10. The heading of Part 4 (commencing with Section
12 5600) of Division 5 of the Probate Code is repealed.

13
14 ~~PART 4. NONPROBATE TRANSFER TO FORMER SPOUSE~~

15
16 SEC. 11. A heading is added as Chapter 3 (commencing with
17 Section 5040) to Part 1 of Division 5 of the Probate Code,
18 immediately preceding Section 5040, to read:

19
20 CHAPTER 3. NONPROBATE TRANSFER TO FORMER SPOUSE

21
22 SEC. 12. Section 5600 of the Probate Code is amended and
23 renumbered to read:

24 ~~5600.~~

25 *5040.* (a) Except as provided in subdivision (b), a nonprobate
26 transfer to the transferor's former spouse, in an instrument executed
27 by the transferor before or during the marriage, fails if, at the time
28 of the transferor's death, the former spouse is not the transferor's
29 surviving spouse as defined in Section 78, as a result of the
30 dissolution or annulment of the marriage. A judgment of legal
31 separation that does not terminate the status of husband and wife
32 is not a dissolution for purposes of this section.

33 (b) Subdivision (a) does not cause a nonprobate transfer to fail
34 in any of the following cases:

35 (1) The nonprobate transfer is not subject to revocation by the
36 transferor at the time of the transferor's death.

37 (2) There is clear and convincing evidence that the transferor
38 intended to preserve the nonprobate transfer to the former spouse.

1 (3) A court order that the nonprobate transfer be maintained on
2 behalf of the former spouse is in effect at the time of the
3 transferor's death.

4 (c) Where a nonprobate transfer fails by operation of this section,
5 the instrument making the nonprobate transfer shall be treated as
6 it would if the former spouse failed to survive the transferor.

7 (d) Nothing in this section affects the rights of a subsequent
8 purchaser or encumbrancer for value in good faith who relies on
9 the apparent failure of a nonprobate transfer under this section or
10 who lacks knowledge of the failure of a nonprobate transfer under
11 this section.

12 (e) As used in this section, "nonprobate transfer" means a
13 provision, other than a provision of a life insurance policy, of either
14 of the following types:

15 (1) A provision of a type described in Section 5000.

16 (2) A provision in an instrument that operates on death, other
17 than a will, conferring a power of appointment or naming a trustee.

18 SEC. 13. Section 5601 of the Probate Code is amended and
19 renumbered to read:

20 ~~5601.~~

21 5042. (a) Except as provided in subdivision (b), a joint tenancy
22 between the decedent and the decedent's former spouse, created
23 before or during the marriage, is severed as to the decedent's
24 interest if, at the time of the decedent's death, the former spouse
25 is not the decedent's surviving spouse as defined in Section 78, as
26 a result of the dissolution or annulment of the marriage. A judgment
27 of legal separation that does not terminate the status of husband
28 and wife is not a dissolution for purposes of this section.

29 (b) Subdivision (a) does not sever a joint tenancy in either of
30 the following cases:

31 (1) The joint tenancy is not subject to severance by the decedent
32 at the time of the decedent's death.

33 (2) There is clear and convincing evidence that the decedent
34 intended to preserve the joint tenancy in favor of the former spouse.

35 (c) Nothing in this section affects the rights of a subsequent
36 purchaser or encumbrancer for value in good faith who relies on
37 an apparent severance under this section or who lacks knowledge
38 of a severance under this section.

(d) For purposes of this section, property held in “joint tenancy” includes property held as community property with right of survivorship, as described in Section 682.1 of the Civil Code.

SEC. 14. Section 5602 of the Probate Code is amended and renumbered to read:

~~5602.~~

5044. (a) Nothing in this ~~part~~ *chapter* affects the rights of a purchaser or encumbrancer of real property for value who in good faith relies on an affidavit or a declaration under penalty of perjury under the laws of this state that states all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent’s death.

(3) A description of the real property transferred to the affiant or declarant by an instrument making a nonprobate transfer or by operation of joint tenancy survivorship.

(4) Either of the following, as appropriate:

(A) The affiant or declarant is the surviving spouse of the decedent.

(B) The affiant or declarant is not the surviving spouse of the decedent, but the rights of the affiant or declarant to the described property are not affected by Section ~~5600~~ 5040 or ~~5601~~ 5042.

(b) A person relying on an affidavit or declaration made pursuant to subdivision (a) has no duty to inquire into the truth of the matters stated in the affidavit or declaration.

(c) An affidavit or declaration made pursuant to subdivision (a) may be recorded.

SEC. 15. Section 5603 of the Probate Code is amended and renumbered to read:

~~5603.~~

5046. Nothing in this ~~part~~ *chapter* is intended to limit the court’s authority to order a party to a dissolution or annulment of marriage to maintain the former spouse as a beneficiary on any nonprobate transfer described in this ~~part~~, *chapter*, or to preserve a joint tenancy in favor of the former spouse.

SEC. 16. Section 5604 of the Probate Code is amended and renumbered to read:

~~5604.~~

5048. (a) This ~~part~~ *chapter*, *formerly Part 4 (commencing with Section 5600)*, is operative on January 1, 2002.

1 (b) Except as provided in subdivision (c), this ~~part~~ *chapter*
2 applies to an instrument making a nonprobate transfer or creating
3 a joint tenancy whether executed before, on, or after the operative
4 date of this ~~part~~ *chapter*.

5 (c) Sections ~~5600~~ 5040 and ~~5601~~ 5042 do not apply, and the
6 applicable law in effect before the operative date of this ~~part~~
7 *chapter* applies, to an instrument making a nonprobate transfer or
8 creating a joint tenancy in either of the following circumstances:

9 (1) The person making the nonprobate transfer or creating the
10 joint tenancy dies before the operative date of this ~~part~~ *chapter*.

11 (2) The dissolution of marriage or other event that terminates
12 the status of the nonprobate transfer beneficiary or joint tenant as
13 a surviving spouse occurs before the operative date of this ~~part~~
14 *chapter*.

15 SEC. 17. Part 4 (commencing with Section 5600) is added to
16 Division 5 of the Probate Code, to read:

17
18 PART 4. REVOCABLE TRANSFER ON DEATH DEED

19
20 CHAPTER 1. GENERAL PROVISIONS

21
22 Article 1. Preliminary Provisions

23
24 5600. (a) This part applies to a revocable transfer on death
25 deed made by a transferor who dies on or after January 1, 2016,
26 whether the deed was executed or recorded before, on, or after
27 January 1, 2016.

28 (b) Nothing in this part invalidates an otherwise valid transfer
29 under Section 5602.

30 (c) This part shall remain in effect only until January 1, 2021,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before January 1, 2021, deletes or extends that date. The
33 repeal of this part pursuant to this subdivision shall not affect the
34 validity or effect of a revocable transfer on death deed that is
35 executed before January 1, 2021, and shall not affect the authority
36 of the transferor to revoke a transfer on death deed by recording
37 a signed and notarized instrument that is substantially in the form
38 specified in Section 5644.

39 5602. (a) This part does not preclude use of any other method
40 of conveying real property that is permitted by law and that has

1 the effect of postponing enjoyment of the property until the death
2 of the owner.

3 (b) This part does not invalidate a deed of real property,
4 otherwise effective to convey title to the property, that is not
5 recorded until after the death of the owner.

6 5604. (a) Except as provided in subdivision (b), nothing in
7 this part affects the application to a revocable transfer on death
8 deed of any other statute governing a nonprobate transfer on death,
9 including, but not limited to, any of the following provisions that
10 by its terms or intent would apply to a nonprobate transfer on death:

11 (1) Division 2 (commencing with Section 100).

12 (2) Part 1 (commencing with Section 5000) of this division.

13 (3) Division 10 (commencing with Section 20100).

14 (4) Division 11 (commencing with Section 21101).

15 (b) Notwithstanding subdivision (a), a provision of another
16 statute governing a nonprobate transfer on death does not apply
17 to a revocable transfer on death deed to the extent this part provides
18 a contrary rule.

19 20 Article 2. Definitions 21

22 5606. Unless the provision or context otherwise requires, the
23 definitions in this article govern the construction of this part.

24 5608. “Beneficiary” means a person named in a revocable
25 transfer on death deed as transferee of the property.

26 5610. “Real property” means the fee or an interest in real
27 property. The term includes, but is not limited to, any of the
28 following interests in real property:

29 (a) A leasehold.

30 (b) An interest in a common interest development within the
31 meaning of Section 6534 of the Civil Code.

32 (c) An easement, license, permit, or other right in property, to
33 the extent the right is both of the following:

34 (1) A recordable interest in property.

35 (2) Transferable on death of the owner of the right.

36 5612. “Recorded” has the meaning provided in Section 1170
37 of the Civil Code.

38 5614. (a) “Revocable transfer on death deed” means an
39 instrument created pursuant to this part that does all of the
40 following:

1 (1) Makes a donative transfer of real property to a named
2 beneficiary.

3 (2) Operates on the transferor's death.

4 (3) Remains revocable until the transferor's death.

5 (b) A revocable transfer on death deed may also be known as
6 a "revocable TOD deed."

7 5616. "Transferor" means an owner of real property who makes
8 a revocable transfer on death deed of the property.

9
10 CHAPTER 2. EXECUTION AND REVOCATION

11
12 Article 1. Execution

13
14 5620. An owner of real property who has testamentary capacity
15 may make a revocable transfer on death deed of the property.

16 5622. (a) The transferor shall identify the beneficiary by name
17 in a revocable transfer on death deed.

18 (b) The transferor may name more than one beneficiary. If there
19 is more than one beneficiary, they take the property as tenants in
20 common, in equal shares.

21 (c) The transferor may name as beneficiary the trustee of a trust
22 even if the trust is revocable.

23 5624. A revocable transfer on death deed is not effective unless
24 the transferor signs and dates the deed and acknowledges the deed
25 before a notary public.

26 5626. (a) A revocable transfer on death deed is not effective
27 unless the deed is recorded on or before 60 days after the date it
28 was executed.

29 (b) The transferor is not required to deliver a revocable transfer
30 on death deed to the beneficiary during the transferor's life.

31 (c) The beneficiary is not required to accept a revocable transfer
32 on death deed from the transferor during the transferor's life.

33 5628. (a) If a revocable transfer on death deed is recorded for
34 the same property for which another revocable transfer on death
35 deed is recorded, the later executed deed is the operative instrument
36 and its recordation revokes the earlier executed deed.

37 (b) Revocation of a revocable transfer on death deed does not
38 revive an instrument earlier revoked by recordation of that deed.

Article 2. Revocation

5630. A transferor who has testamentary capacity may revoke a revocable transfer on death deed at any time.

5632. (a) An instrument revoking a revocable transfer on death deed shall be executed and recorded before the transferor's death in the same manner as execution and recordation of a revocable transfer on death deed.

(b) Joinder, consent, or agreement of, or notice to, the beneficiary is not required for revocation of a revocable transfer on death deed.

Article 3. Statutory Forms

5642. A revocable transfer on death deed shall be in the form provided in this section.

(a) The face of the form shall be in substantially the following form:

SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED

(California Probate Code Section 5642)

Recording Requested By:

When Recorded Mail This Deed To

Name:

Address:

Assessor's Parcel Number: Space Above For Recorder's Use

This document is exempt from documentary transfer tax under Rev. & Tax. Code § 11930. This document is exempt from preliminary change of ownership report under Rev. & Tax. Code § 480.3.

IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED

Use this deed to transfer the property described below directly to your named beneficiaries when you die. YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER SIDE OF THIS FORM. You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS. This form

MUST be RECORDED on or before 60 days after the date it is signed or it will not be effective.

PROPERTY DESCRIPTION

Print the address and parcel number (found on your property tax bill) or other legal description of the property affected by this deed:

BENEFICIARY(IES)

Print the NAME(S) of the person(s) who will receive the property on your death (DO NOT use general terms like “my children”):

TRANSFER ON DEATH

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below:

_____ Date _____

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must complete and RECORD a SEPARATE deed.

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),

1 and that by his/her/their signature(s) on the instrument the person(s), or the
2 entity upon behalf of which the person(s) acted, executed the instrument.

3 I certify under PENALTY OF PERJURY under the laws of the State of
4 California that the foregoing paragraph is true and correct.

5 WITNESS my hand and official seal.

6 Signature _____ (Seal)

7
8 (b) The reverse side of a form executed under this section shall
9 be in substantially the following form:

10
11 **COMMON QUESTIONS ABOUT THE USE OF THIS FORM**

12
13 **WHAT DOES THE TOD DEED DO?** When you die, the identified property
14 will transfer to your named beneficiary without probate. The TOD deed has
15 no effect until you die. You can revoke it at any time.

16 **HOW DO I USE THE TOD DEED?** Complete this form. Have it notarized.
17 **RECORD** the form in the county where the property is located. The form
18 **MUST** be recorded on or before 60 days after the date you sign it or the deed
19 has no effect.

20 **HOW DO I “RECORD” THE FORM?** Take the completed and notarized
21 form to the county recorder for the county in which the property is located.
22 Follow the instructions given by the county recorder to make the form part of
23 the official property records.

24 **WHAT IF I SHARE OWNERSHIP OF THE PROPERTY?** This form only
25 transfers **YOUR** share of the property. If a co-owner also wants to name a
26 TOD beneficiary, that co-owner must complete and **RECORD** a separate form.

27 **CAN I REVOKE THE TOD DEED IF I CHANGE MY MIND?** Yes. You
28 may revoke the TOD deed at any time. No one, including your beneficiary,
29 can prevent you from revoking the deed.

30 **HOW DO I REVOKE THE TOD DEED?** There are three ways to revoke
31 a recorded TOD deed: (1) Complete, notarize, and **RECORD** a revocation
32 form. (2) Create and **RECORD** a new TOD deed, trust, or other estate planning
33 document that disposes of the same property. (3) Sell or give away the property
34 before your death and **RECORD** the deed. A TOD deed can only affect property
35 that you own when you die.

36 **IF I CREATE A NEW TOD DEED, TRUST, OR OTHER ESTATE**
37 **PLANNING DOCUMENT THAT DISPOSES OF THE SAME PROPERTY,**
38 **DOES THAT AUTOMATICALLY REVOKE A RECORDED TOD DEED?**
39 No. If you want the new document to revoke a recorded TOD deed, the new
40 document **MUST** be signed and dated after the deed you wish to revoke and

1 it MUST be RECORDED. To avoid any doubt you may wish to RECORD a
2 TOD deed revocation form before creating the new instrument.

3 I AM BEING PRESSURED TO COMPLETE THIS FORM. WHAT
4 SHOULD I DO? Do NOT complete this form unless you freely choose to do
5 so. If you are being pressured to dispose of your property in a way that you
6 do not want, you may want to alert a family member, friend, the district
7 attorney, or a senior service agency.

8 DO I NEED TO TELL MY BENEFICIARY ABOUT THE TOD DEED?
9 No. But, secrecy can cause later complications and might make it easier for
10 others to commit fraud.

11 WHAT DOES MY BENEFICIARY NEED TO DO WHEN I DIE? Your
12 beneficiary must RECORD evidence of your death (Prob. Code § 210), and
13 file a change in ownership notice (Rev. & Tax. Code § 480). If you received
14 Medi-Cal benefits, your beneficiary must notify the State Department of Health
15 Care Services of your death and provide a copy of your death certificate (Prob.
16 Code § 215).

17 WHAT IF I NAME MORE THAN ONE BENEFICIARY? Your
18 beneficiaries will become co-owners in equal shares. If you want a different
19 result, you should not use this form. You MUST name your beneficiaries
20 individually. You MAY NOT use general terms to describe beneficiaries, such
21 as “my children.”

22 WHAT IF A BENEFICIARY DIES BEFORE I DO? You should probably
23 create and RECORD a new deed. Otherwise, the property will transfer
24 according to the general rules on failed gifts, which may not meet your needs.
25 See Prob. Code §§ 21110–21111.

26 WHAT IS THE EFFECT OF A TOD DEED ON PROPERTY THAT I
27 OWN AS JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT
28 OF SURVIVORSHIP? If you are the first joint tenant or spouse to die, the
29 deed is VOID and has no effect. The property transfers to your joint tenant or
30 surviving spouse and not according to this deed. If you are the last joint tenant
31 or spouse to die, the deed takes effect and controls the ownership of your
32 property when you die. If you do not want these results, do not use this form.
33 The deed does NOT transfer the share of a co-owner of the property. Any
34 co-owner who wants to name a TOD beneficiary must complete and RECORD
35 a SEPARATE deed.

36 CAN I ADD OTHER CONDITIONS ON THE FORM? No. If you do, your
37 beneficiary may need to go to court to clear title.

38 IS PROPERTY TRANSFERRED BY THE TOD DEED SUBJECT TO
39 MY DEBTS? Yes.

1 DOES THE TOD DEED HELP ME TO AVOID GIFT AND ESTATE
2 TAXES? No.

3 HOW DOES THE TOD DEED AFFECT PROPERTY TAXES? The TOD
4 deed has no effect on your property taxes until your death. At that time,
5 property tax law applies as it would to any other change of ownership.

6 DOES THE TOD DEED AFFECT MY ELIGIBILITY FOR MEDI-CAL?
7 No.

8 AFTER MY DEATH, WILL MY HOME BE LIABLE FOR
9 REIMBURSEMENT OF THE STATE FOR MEDI-CAL EXPENDITURES?
10 If your estate is subject to reimbursement, any property transferred by a TOD
11 deed will also be subject to reimbursement.

12
13 5644. A transferor may revoke a revocable transfer on death
14 deed by an instrument in substantially the following form:

15
16 **Revocation of**
17 **Revocable Transfer on Death (TOD) Deed**
18 (California Probate Code Section 5600)
19

20 Recording Requested By:

21
22 When Recorded Mail This Deed To

23 Name:

24 Address:

25 Assessor's Parcel Number: Space Above For Recorder's Use

26 This deed revocation is exempt from documentary transfer tax under Rev.
27 & Tax. Code §11930. This deed revocation is exempt from preliminary change
28 of ownership report under Rev. & Tax. Code § 480.3.
29

30 **IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE**
31 **EFFECTIVE**
32

33 This revocation form MUST be RECORDED before your death or it will
34 not be effective. This revocation form only affects a transfer on death deed
35 that YOU made. A transfer on death deed made by a co-owner of your property
36 is not affected by this revocation form. A co-owner who wants to revoke a
37 transfer on death deed that he/she made must complete and RECORD a
38 SEPARATE revocation form.
39

40 **PROPERTY DESCRIPTION**

Print the address and parcel number (found on your property tax bill) or other legal description of the property affected by this revocation:

REVOCATION

I revoke any TOD deed to transfer the described property that I executed before executing this form.

SIGNATURE AND DATE

Sign and print your name below:

Date _____

ACKNOWLEDGMENT OF NOTARY

State of California)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

1 I certify under PENALTY OF PERJURY under the laws of the State of
2 California that the foregoing paragraph is true and correct.

3 WITNESS my hand and official seal.

4 Signature _____ (Seal)

5
6
7 CHAPTER 3. EFFECT

8
9 Article 1. General Provisions

10
11 5650. During the transferor's life, execution and recordation
12 of a revocable transfer on death deed:

13 (a) Does not affect the ownership rights of the transferor, and
14 the transferor or the transferor's agent or other fiduciary may
15 convey, assign, contract, encumber, or otherwise deal with the
16 property, and the property is subject to process of the transferor's
17 creditors, as if no revocable transfer on death deed were executed
18 or recorded.

19 (b) Does not create any legal or equitable right in the beneficiary,
20 and the property is not subject to process of the beneficiary's
21 creditors.

22 (c) Does not transfer or convey any right, title, or interest in the
23 property.

24 5652. (a) A revocable transfer on death deed transfers all of
25 the transferor's interest in the property to the beneficiary on the
26 transferor's death.

27 (b) A revocable transfer on death deed may condition the
28 beneficiary's right to the property on an intervening life estate, but
29 may not create a future interest in a beneficiary.

30 (c) Property is transferred by a revocable transfer on death deed
31 subject to any limitation on the transferor's interest that is of record
32 at the transferor's death including, but not limited to, a lien,
33 encumbrance, easement, lease, or other instrument affecting the
34 transferor's interest, whether recorded before or after recordation
35 of the revocable transfer on death deed. The holder of rights under
36 that instrument may enforce those rights against the property
37 notwithstanding its transfer by the revocable transfer on death
38 deed.

39 (d) A revocable transfer on death deed transfers the property
40 without covenant or warranty of title.

1 5654. (a) For the purpose of determination of eligibility for
2 health care under Chapter 7 (commencing with Section 14000) or
3 Chapter 8 (commencing with Section 14200) of Part 3 of Division
4 9 of the Welfare and Institutions Code, execution and recordation
5 of a revocable transfer on death deed is not a lifetime transfer of
6 the property.

7 (b) For the purpose of a claim of the State Department of Health
8 Care Services under Section 14009.5 of the Welfare and Institutions
9 Code, property transferred by a revocable transfer on death deed
10 is a part of the estate of the decedent, and the beneficiary is a
11 recipient of the property by distribution or survival.

12 5656. For the purpose of application of the property taxation
13 and documentary transfer tax provisions of the Revenue and
14 Taxation Code:

15 (a) Execution and recordation of, or revocation of, a revocable
16 transfer on death deed of real property is not a change in ownership
17 of the property and does not require declaration or payment of a
18 documentary transfer tax or filing of a preliminary change of
19 ownership report.

20 (b) Transfer of real property on the death of the transferor by a
21 revocable transfer on death deed is a change in ownership of the
22 property.

23
24 Article 2. Other Instruments and Forms of Tenure
25

26 5660. If a revocable transfer on death deed recorded on or
27 before 60 days after the date it was executed and another instrument
28 both purport to dispose of the same property:

29 (a) If the other instrument is not recorded before the transferor's
30 death, the revocable transfer on death deed is the operative
31 instrument.

32 (b) If the other instrument is recorded before the transferor's
33 death and makes a revocable disposition of the property, the later
34 executed of the revocable transfer on death deed or the other
35 instrument is the operative instrument.

36 (c) If the other instrument is recorded before the transferor's
37 death and makes an irrevocable disposition of the property, the
38 other instrument and not the revocable transfer on death deed is
39 the operative instrument.

1 5664. If, at the time of the transferor's death, title to the
2 property described in the revocable transfer on death deed is held
3 in joint tenancy or as community property with right of
4 survivorship, the revocable transfer on death deed is void. The
5 transferor's interest in the property is governed by the right of
6 survivorship and not by the revocable transfer on death deed.

7 5666. (a) Chapter 2 (commencing with Section 5010) of Part
8 1 applies to a revocable transfer on death deed of community
9 property.

10 (b) For the purpose of application of Chapter 2 (commencing
11 with Section 5010) of Part 1 to a revocable transfer on death deed
12 of community property, written consent to the deed, revocation of
13 written consent to the deed, or modification of the deed, is
14 ineffective unless recorded within the time required by that chapter
15 for execution or service of the written consent, revocation, or
16 modification.

17 5668. A revocable transfer on death deed of community
18 property with right of survivorship is subject to Section 5666,
19 relating to a revocable transfer on death deed of community
20 property.

21 22 Article 3. Creditors 23

24 5670. Notwithstanding any other statute governing priorities
25 among creditors, a creditor of the transferor whose right is
26 evidenced at the time of the transferor's death by an encumbrance
27 or lien of record on property transferred by a revocable transfer
28 on death deed has priority against the property over a creditor of
29 the beneficiary, regardless of whether the beneficiary's obligation
30 was created before or after the transferor's death and regardless
31 of whether the obligation is secured or unsecured, voluntary or
32 involuntary, recorded or unrecorded.

33 5672. Each beneficiary is personally liable to the extent
34 provided in Section 5674 for the unsecured debts of the transferor.
35 Any such debt may be enforced against the beneficiary in the same
36 manner as it could have been enforced against the transferor if the
37 transferor had not died. In any action based on the debt, the
38 beneficiary may assert any defense, cross-complaint, or setoff that
39 would have been available to the transferor if the transferor had
40 not died. Nothing in this section permits enforcement of a claim

1 that is barred under Part 4 (commencing with Section 9000) of
2 Division 7. Section 366.2 of the Code of Civil Procedure applies
3 in an action under this section.

4 5674. (a) A beneficiary is not liable under Section 5672 if
5 proceedings for the administration of the transferor's estate are
6 commenced and the beneficiary satisfies the requirements of
7 Section 5676.

8 (b) The aggregate of the personal liability of a beneficiary under
9 Section 5672 shall not exceed the sum of the following:

10 (1) The fair market value at the time of the transferor's death
11 of the property received by the beneficiary pursuant to the
12 revocable transfer on death deed, less the amount of any liens and
13 encumbrances on the property at that time.

14 (2) The net income the beneficiary received from the property.

15 (3) If the property has been disposed of, interest on the fair
16 market value of the property from the date of disposition at the
17 rate payable on a money judgment. For the purposes of this
18 paragraph, "fair market value of the property" has the same
19 meaning as defined in paragraph (2) of subdivision (a) of Section
20 5676.

21 5676. (a) Subject to subdivisions (b), (c), and (d), if
22 proceedings for the administration of the transferor's estate are
23 commenced, each beneficiary is liable for:

24 (1) The restitution to the transferor's estate of the property the
25 beneficiary received pursuant to the revocable transfer on death
26 deed if the beneficiary still has the property, together with (A) the
27 net income the beneficiary received from the property and (B) if
28 the beneficiary encumbered the property after the transferor's
29 death, the amount necessary to satisfy the balance of the
30 encumbrance as of the date the property is restored to the estate.

31 (2) The restitution to the transferor's estate of the fair market
32 value of the property if the beneficiary no longer has the property,
33 together with (A) the net income the beneficiary received from the
34 property prior to disposing of it and (B) interest from the date of
35 disposition at the rate payable on a money judgment on the fair
36 market value of the property. For the purposes of this paragraph,
37 the "fair market value of the property" is the fair market value,
38 determined as of the time of the disposition of the property, of the
39 property the beneficiary received pursuant to the revocable transfer

1 on death deed, less the amount of any liens and encumbrances on
2 the property at the time of the transferor's death.

3 (b) Subject to subdivision (c), if proceedings for the
4 administration of the transferor's estate are commenced and a
5 beneficiary made a significant improvement to the property
6 received by the beneficiary pursuant to the revocable transfer on
7 death deed, the beneficiary is liable for whichever of the following
8 the transferor's estate elects:

9 (1) The restitution of the property, as improved, to the estate of
10 the transferor upon the condition that the estate reimburse the
11 beneficiary for (A) the amount by which the improvement increases
12 the fair market value of the property restored, determined as of the
13 time of restitution, and (B) the amount paid by the beneficiary for
14 principal and interest on any liens or encumbrances that were on
15 the property at the time of the transferor's death.

16 (2) The restoration to the transferor's estate of the fair market
17 value of the property, determined as of the time of the transferor's
18 death, less the amount of any liens and encumbrances on the
19 property at that time, together with interest on the net amount at
20 the rate payable on a money judgment running from the time of
21 the transferor's death.

22 (c) The property and amount required to be restored to the estate
23 under this section shall be reduced by any property or amount paid
24 by the beneficiary to satisfy a liability under Section 5672.

25 (d) An action to enforce the liability under this section may be
26 brought only by the personal representative of the estate of the
27 transferor. Whether or not the personal representative brings an
28 action under this section, the personal representative may enforce
29 the liability only to the extent of the beneficiary's liability under
30 Section 5672. The reasonable cost of proceeding under this section
31 shall be reimbursed as an extraordinary service under Sections
32 10801 and 10811. Action under this section is optional. A personal
33 representative is never required to act under this section.

34 (e) An action to enforce the liability under this section is forever
35 barred three years after the transferor's death. The three-year period
36 specified in this subdivision is not tolled for any reason. Nothing
37 in this subdivision affects the requirements of Section 215, any
38 law that may toll the limitations period for the commencement of
39 a Medi-Cal estate recovery action, or the time for commencement

1 of an action by the Department of Health Care Services under
2 Section 14009.5 of the Welfare and Institutions Code.

3
4 CHAPTER 4. EFFECTUATION OF TRANSFER
5

6 5680. (a) The beneficiary may establish the fact of the
7 transferor's death under the procedure provided in Chapter 2
8 (commencing with Section 210) of Part 4 of Division 2. For the
9 purpose of this subdivision, the beneficiary is a person empowered
10 by statute to act on behalf of the transferor or the transferor's estate
11 within the meaning of Section 103526 of the Health and Safety
12 Code.

13 (b) For the purpose of filing the change in ownership statement
14 required by Section 480 of the Revenue and Taxation Code, the
15 beneficiary is a transferee of real property by reason of death.

16 (c) For the purpose of giving the notice to the Director of Health
17 Care Services provided for in Section 215, the beneficiary is a
18 beneficiary of the transferor.

19 (d) The beneficiary is liable to the transferor's estate for prorated
20 estate and generation-skipping transfer taxes to the extent provided
21 in Division 10 (commencing with Section 20100).

22 5682. If both of the following conditions are satisfied, a person
23 dealing with a beneficiary of a revocable transfer on death deed
24 of real property shall have the same rights and protections as the
25 person would have if the beneficiary had been named as a
26 distributee of the property in an order for distribution of the
27 transferor's estate that had become final:

28 (a) The person acted in good faith and for a valuable
29 consideration.

30 (b) An affidavit of death was recorded for the property under
31 Chapter 2 (commencing with Section 210) of Part 4 of Division
32 2.

33
34 CHAPTER 5. CONTEST
35

36 5690. (a) The transferor's personal representative or an
37 interested person may, under Part 19 (commencing with Section
38 850) of Division 2, contest the validity of a transfer of property
39 by a revocable transfer on death deed.

(b) The proper county for a contest proceeding is the proper county for proceedings concerning administration of the transferor's estate, whether or not proceedings concerning administration of the transferor's estate have been commenced at the time of the contest.

(c) On commencement of a contest proceeding, the contestant may record a lis pendens in the county in which the revocable transfer on death deed is recorded.

5692. (a) A contest proceeding pursuant to Section 5690 shall not be commenced before the transferor's death.

(b) A contest proceeding shall be commenced within the earlier of the following times:

(1) Three years after the transferor's death.

(2) One year after the beneficiary establishes the fact of the transferor's death under the procedure provided in Chapter 2 (commencing with Section 210) of Part 4 of Division 2.

5694. If the court in a contest proceeding determines that a transfer of property by a revocable transfer on death deed is invalid, the court shall order the following relief:

(a) If the proceeding was commenced and a lis pendens was recorded within 120 days after the transferor's death, the court shall void the deed and order transfer of the property to the person entitled to it.

(b) If the proceeding was not commenced and a lis pendens was not recorded within 120 days after the transferor's death, the court shall grant appropriate relief but the court order shall not affect the rights in the property of a purchaser or encumbrancer for value and in good faith acquired before commencement of the proceeding and recordation of a lis pendens.

5696. Nothing in this chapter limits the ability of a conservator or guardian of a transferor or prospective transferor, or another interested person, to petition the court for invalidation of a revocable transfer on death deed recorded by the transferor or prospective transferor on the basis of fraud, undue influence, duress, mistake, or other invalidating cause.

SEC. 18. Section 13111 of the Probate Code is amended to read:

13111. (a) Subject to the provisions of this section, if proceedings for the administration of the decedent's estate are commenced in this state, or if the decedent's personal

1 representative has consented to the payment, transfer, or delivery
2 of the decedent's property under this chapter and the personal
3 representative later requests that the property be restored to the
4 estate, each person to whom payment, delivery, or transfer of the
5 decedent's property is made under this chapter is liable for:

6 (1) The restitution of the property to the estate if the person still
7 has the property, together with (A) the net income the person
8 received from the property and (B) if the person encumbered the
9 property after it was delivered or transferred to the person, the
10 amount necessary to satisfy the balance of the encumbrance as of
11 the date the property is restored to the estate.

12 (2) The restitution to the estate of the fair market value of the
13 property if the person no longer has the property, together with
14 (A) the net income the person received from the property and (B)
15 interest on the fair market value of the property from the date of
16 disposition at the rate payable on a money judgment. For the
17 purposes of this subdivision, the "fair market value of the property"
18 is the fair market value, determined as of the time of the disposition
19 of the property, of the property paid, delivered, or transferred to
20 the person under this chapter, less any liens and encumbrances on
21 the property at that time.

22 (b) Subject to subdivision (c) and subject to any additional
23 liability the person has under Sections 13109 to 13112, inclusive,
24 if the person fraudulently secured the payment, delivery, or transfer
25 of the decedent's property under this chapter, the person is liable
26 under this section for restitution to the decedent's estate of three
27 times the fair market value of the property. For the purposes of
28 this subdivision, the "fair market value of the property" is the fair
29 market value, determined as of the time the person liable under
30 this subdivision presents the affidavit or declaration under this
31 chapter, of the property paid, delivered, or transferred to the person
32 under this chapter, less the amount of any liens and encumbrances
33 on the property at that time.

34 (c) The property and amount required to be restored to the estate
35 under this section shall be reduced by any property or amount paid
36 by the person to satisfy a liability under Section 13109 or 13110.

37 (d) An action to enforce the liability under this section may be
38 brought only by the personal representative of the estate of the
39 decedent. ~~In an action to enforce the liability~~ *Whether or not the*
40 *personal representative brings an action* under this section, the

1 court's judgment *personal representative* may enforce the liability
2 only to the extent necessary to protect the interests of the heirs,
3 devisees, and creditors of the decedent.

4 (e) An action to enforce the liability under this section is forever
5 barred three years after presentation of the affidavit or declaration
6 under this chapter to the holder of the decedent's property, or three
7 years after the discovery of the fraud, whichever is later. The
8 three-year period specified in this subdivision is not tolled for any
9 reason.

10 (f) In the case of a nondomiciliary decedent, restitution under
11 this section shall be made to the estate in an ancillary
12 administration proceeding.

13 SEC. 19. Section 13206 of the Probate Code is amended to
14 read:

15 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if
16 proceedings for the administration of the decedent's estate are
17 commenced, or if the decedent's personal representative has
18 consented to use of the procedure provided by this chapter and the
19 personal representative later requests that the property be restored
20 to the estate, each person who is designated as a successor of the
21 decedent in a certified copy of an affidavit issued under Section
22 13202 is liable for:

23 (1) The restitution to the decedent's estate of the property the
24 person took under the certified copy of the affidavit if the person
25 still has the property, together with (A) the net income the person
26 received from the property and (B) if the person encumbered the
27 property after the certified copy of the affidavit was issued, the
28 amount necessary to satisfy the balance of the encumbrance as of
29 the date the property is restored to the estate.

30 (2) The restitution to the decedent's estate of the fair market
31 value of the property if the person no longer has the property,
32 together with (A) the net income the person received from the
33 property prior to disposing of it and (B) interest from the date of
34 disposition at the rate payable on a money judgment on the fair
35 market value of the property. For the purposes of this paragraph,
36 the "fair market value of the property" is the fair market value,
37 determined as of the time of the disposition of the property, of the
38 property the person took under the certified copy of the affidavit,
39 less the amount of any liens and encumbrances on the property at
40 the time the certified copy of the affidavit was issued.

(b) Subject to subdivision (d), if the person fraudulently executed or filed the affidavit under this chapter, the person is liable under this section for restitution to the decedent's estate of three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, determined as of the time the certified copy of the affidavit was issued, of the property the person took under the certified copy of the affidavit, less the amount of any liens and encumbrances on the property at that time.

(c) Subject to subdivision (d), if proceedings for the administration of the decedent's estate are commenced and a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 made a significant improvement to the property taken by the person under the certified copy of the affidavit in the good faith belief that the person was the successor of the decedent to that property, the person is liable for whichever of the following the decedent's estate elects:

(1) The restitution of the property, as improved, to the estate of the decedent upon the condition that the estate reimburse the person making restitution for (A) the amount by which the improvement increases the fair market value of the property restored, determined as of the time of restitution, and (B) the amount paid by the person for principal and interest on any liens or encumbrances that were on the property at the time the certified copy of the affidavit was issued.

(2) The restoration to the decedent's estate of the fair market value of the property, determined as of the time of the issuance of the certified copy of the affidavit under Section 13202, less the amount of any liens and encumbrances on the property at that time, together with interest on the net amount at the rate payable on a money judgment running from the date of the issuance of the certified copy of the affidavit.

(d) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount paid by the person to satisfy a liability under Section 13204 or 13205.

(e) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. ~~In an action to enforce the liability~~ *Whether or not the personal representative brings an action under this section, the court's judgment* *personal representative may enforce the liability*

1 only to the extent necessary to protect the interests of the heirs,
2 devisees, and creditors of the decedent.

3 (f) An action to enforce the liability under this section is forever
4 barred three years after the certified copy of the affidavit is issued
5 under Section 13202, or three years after the discovery of the fraud,
6 whichever is later. The three-year period specified in this
7 subdivision is not tolled for any reason.

8 SEC. 20. Section 13562 of the Probate Code is amended to
9 read:

10 13562. (a) Subject to subdivisions (b), (c), and (d), if
11 proceedings for the administration of the decedent's estate are
12 commenced, the surviving spouse is liable for:

13 (1) The restitution to the decedent's estate of the decedent's
14 property if the surviving spouse still has the decedent's property,
15 together with (A) the net income the surviving spouse received
16 from the decedent's property and (B) if the surviving spouse
17 encumbered the decedent's property after the date of death, the
18 amount necessary to satisfy the balance of the encumbrance as of
19 the date the decedent's property is restored to the estate.

20 (2) The restitution to the decedent's estate of the fair market
21 value of the decedent's property if the surviving spouse no longer
22 has the decedent's property, together with (A) the net income the
23 surviving spouse received from the decedent's property prior to
24 disposing of it and (B) interest from the date of disposition at the
25 rate payable on a money judgment on the fair market value of the
26 decedent's property. For the purposes of this paragraph, the "fair
27 market value of the decedent's property" is the fair market value
28 of the decedent's property, determined as of the time of the
29 disposition of the decedent's property, less the amount of any liens
30 and encumbrances on the decedent's property at the time of the
31 decedent's death.

32 (b) Subject to subdivision (c), if proceedings for the
33 administration of the decedent's estate are commenced and the
34 surviving spouse made a significant improvement to the decedent's
35 property in the good faith belief that the surviving spouse was the
36 successor of the decedent to the decedent's property, the surviving
37 spouse is liable for whichever of the following the decedent's
38 estate elects:

39 (1) The restitution of the decedent's property, as improved, to
40 the estate of the decedent upon the condition that the estate

1 reimburse the surviving spouse for (A) the amount by which the
2 improvement increases the fair market value of the decedent's
3 property restored, valued as of the time of restitution, and (B) the
4 amount paid by the surviving spouse for principal and interest on
5 any liens or encumbrances that were on the decedent's property
6 at the time of the decedent's death.

7 (2) The restoration to the decedent's estate of the fair market
8 value of the decedent's property, valued as of the time of the
9 decedent's death, excluding the amount of any liens and
10 encumbrances on the decedent's property at that time, together
11 with interest on the net amount at the rate payable on a money
12 judgment running from the date of the decedent's death.

13 (c) The property and amount required to be restored to the estate
14 under this section shall be reduced by any property or amount paid
15 by the surviving spouse to satisfy a liability under Chapter 3
16 (commencing with Section 13550).

17 (d) An action to enforce the liability under this section may be
18 brought only by the personal representative of the estate of the
19 decedent. ~~In an action to enforce the liability~~ *Whether or not the*
20 *personal representative brings an action under this section, the*
21 ~~court's judgment~~ *personal representative may enforce the liability*
22 *only to the extent necessary to protect the interests of the heirs,*
23 *devisees, and creditors of the decedent.*

24 (e) An action to enforce the liability under this section is forever
25 barred three years after the death of the decedent. The three-year
26 period specified in this subdivision is not tolled for any reason.

27 SEC. 21. (a) The California Law Revision Commission shall
28 study the effect of California's revocable transfer on death deed
29 set forth in Part 4 (commencing with Section 5600) of Division 5
30 of the Probate Code and make recommendations in this regard.
31 The commission shall report all of its findings to the Legislature
32 on or before January 1, 2020.

33 (b) In the study required by subdivision (a), the commission
34 shall address all of the following:

35 (1) Whether the revocable transfer on death deed is working
36 effectively.

37 (2) Whether the revocable transfer on death deed should be
38 continued.

39 (3) Whether the revocable transfer on death deed is subject to
40 misuse or misunderstanding.

- 1 (4) What changes should be made to the revocable transfer on
2 death deed or the law associated with the deed to improve its
3 effectiveness and to avoid misuse or misunderstanding.
- 4 (5) Whether the revocable transfer on death deed has been used
5 to perpetuate financial abuse on property owners and, if so, how
6 the law associated with the deed should be changed to minimize
7 this abuse.
- 8 (c) (1) The report required by subdivision (a) shall comply with
9 Section 9795 of the Government Code.
- 10 (2) Pursuant to Section 10231.5 of the Government Code, this
11 section is repealed on January 1, 2024.